

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1076 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL and Sd/-

MR.JUSTICE R.P.DHOLAKIA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

STATE OF GUJARAT

Versus

BACHUBHAI BABARBHAI PATEL

Appearance:

PUBLIC PROSECUTOR for Petitioner

CORAM : MR.JUSTICE B.C.PATEL and

MR.JUSTICE R.P.DHOLAKIA

Date of decision:06-05-98

C.A.V. JUDGEMENT (Per: R.P.Dholakia,J.)

The respondent-accused was charged and tried by the learned Sessions Judge, Valsad at Navsari in Special Atrocity Case No.46 of 1995 for the offences punishable under Secs.332, 323, 504 and 506(2) of Indian Penal Code and Sec.3(1)(10) of Atrocity Act wherein at the end of trial and after hearing the arguments of both the sides,

learned Sessions Judge acquitted the respondent-accused by the judgment and order dated 3-7-1997 against which, the present appeal is preferred by the State.

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#. The facts of the case in short are that on 14-7-1995, the complainant-Arvindbhai Khalpabhai belonging to Hindu Dhodhiya caste, which is included in Scheduled Tribe, was discharging his duty as Talati-cum-Mantri alongwith his Peon Maganbhai Punabhai at Village Dhej. One neighbour Saraswatiben Dahyabhai was also there. At about 2 p.m., accused came there and demanded income certificate from the complainant. As blank form was not available with him, he asked the accused to come the next day. On hearing this, accused gave filthy abuses and slaps on the face of complainant and threatened while going that he will be killed. A complaint was filed to Chikhli Police Station to that effect. Yadi for medical treatment was given to the complainant. After recording the statements of various witnesses and collecting the evidence, Police submitted the charge-sheet against the accused. Accused pleaded not guilty to the charge framed by the learned Sessions Judge and claimed to be tried.

#. Learned Addl. Public Prosecutor has argued that learned Sessions Judge ought to have believed the evidence of complainant and witness Saraswatiben alongwith medical evidence and convicted the accused. He has further argued that the Court should not have come to the conclusion relying on minor contradiction or inconsistency or omission which does not go to the root of the prosecution.

#. We have gone through the copy of the judgment. It is an admitted fact that the complainant was working as Talati-cum-Mantri at the relevant time. It is transpired from his evidence that though the Police had issued a yadi for treatment to Chikhli hospital, which is only half kilometer away from the Police Station, he had chosen to go to Khergam hospital, that too, after three days and for that, no satisfactory explanation is putforward by the complainant. The prosecution could not prove that accused has given three slaps to the complainant. The Peon-Maganbhai Punabhai, though present at the scene of offence, was not examined by the prosecution. Though Saraswatiben was examined, it appears that, she is a chance witness. The prosecution has also not examined the independent witness-Chotubhai, who was serving in the panchayat office or any other person from the adjoining office. Hence, we are of the

view that prosecution has failed to get corroboration from other witness also.

#. We have gone through the evidence which was suggested to be read by learned Addl. Public Prosecutor. In an appeal against the order of acquittal, though there is no limitation upon the power of the High Court to review at large the evidence upon which, the acquittal was founded and to reach to a conclusion that the order of acquittal should be reversed, in exercising that power and before reaching its conclusions upon fact, the High Court should and will always give proper weight and consideration to such matters as (1) the view of the trial Judge as to the credibility of the witnesses; ((2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at the trial; (3) the right of the accused to the benefit of any doubt, and, (4) the slowness of an appellate Court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witnesses (AIR 1934 PC 227).

#. We are not discussing the evidence of each witness in detail in view of the observations made by the Hon'ble Apex Court in the case of STATE OF KARNATAKA VS. HEMAREDDY reported in AIR 1981 SC 1417 which reads as under:-

".... This court has observed in Girija Nandini Devi V. Bigendra Nandini Chaudry (1967) 1 SCR 93: (AIR 1976 SC 1124) that it is not the duty of the appellate court when it agrees with the view of the trial Court on the evidence to repeat the narration of the evidence or to reiterate the reasons given by the trial Court expression of general agreement with the reasons given by the Court the decision of which is under appeal, will ordinarily suffice."

#. It is under the above circumstances that appeal is required to be dismissed and is accordingly dismissed.

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